IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5093 To 5106 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
VITHALBHAI CHATURBHAI PATEL & 1 - Respondents

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Appearance :
MS KRINA P.CALLA, AGP, for Appellant.
MR AJ PATEL for Respondent : 1/claimant,
None for respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 20/12/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, states at the Bar that interest of the appellant and that of the respondent No.2 is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of the appeals upon the respondent No.2. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged legality of common judgment and award dated September 30, 2004 rendered by the learned Extra Assistant Judge &

Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case No. 760 of 1998 with Land Acquisition Cases Nos. 766 to 778 of 1998, by which the claimants have been awarded additional amount of compensation at the rate of Rs.19.10 paise per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.35 Paise per square metre for irrigated lands and Rs.0.90 Paise per square metre for non-irrigated lands by his award dated June 13, 1996.

3. The Executive Engineer, Narmada Yojna, Division No.4/5, Mehsana, proposed to the State Government to acquire the lands of Village: Nayakpura, Taluka: Viramgam, District: Ahmedabad for the public purpose of construction of Canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands specified in the proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette

on November 13, 1992. The landowners were thereafter served with the notices as required by Section 4 of the Act. On receipt of notices, the land-owners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5-A(2) of the Act to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Nayakpura specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was issued, which was published in the official gazette on June 2, 1994. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated June 13, 1996 offered compensation to the claimants at the rate of Rs.1.35 paise per square

metre for irrigated lands and Rs.0.90 paise per square metre for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Navrangpura, where they were registered as Land Acquisition Case No. 760 of 1998 with Land Acquisition Case Nos. 766 of 1998 to 778 of 1998.

4. On behalf of the claimants, witness Bhagwanbhai Raghubhai Patel, was examined at Exhibit 80. Over and above stating that the lands acquired were highly fertile, the witness claimed that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per *vigha* from the sale of agricultural produces such as cotton, cumin-seeds, *juvar, millet,* wheat, etc. The witness mentioned before the Court that his village Nayakpura was fully developed and that each claimant was selling his

agricultural produces at Becharaji, Kadi, Katosan, Mandal, Unjha etc. The witness further mentioned that just near his village, another village Kachrol is situated, from-where lands were acquired earlier for the same public purpose and as the lands, which were acquired earlier from village Kachrol, were similar in all respects to the lands acquired in the instant case, the claimants should be awarded enhanced compensation on the basis of previous award of the Reference Court relating to the lands of Village : Kachrol. Though this witness was cross-examined, at length, on behalf of the appellant, nothing substantial could be elicited nor his assertion that the lands of village Kachrol, which were previously acquired, were similar to the lands acquired in the instant case, could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Kanaiyalal Atmaram Patel, who was then Deputy Engineer, was examined at Exhibit 32. In his examination-in-chief, the witness asserted that before determining compensation payable to the

claimants, the Special Land Acquisition Officer had taken into consideration the relevant factors and, therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the said witness admitted that he had no personal knowledge regarding acquisition proceedings initiated in the instant case. The witness further admitted that the lands of village Kachrol were not irrigated lands, whereas the lands which were acquired in the instant case from village Nayakpura were irrigated lands. It was also admitted by him that the previous award of the Reference Court relating to the lands of Village: Kachrol was accepted by the Acquiring Authorities and that the claimants were awarded compensation on the basis of the said award.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of Village: Kachrol was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired

in the instant case. On the basis of the said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.19.10 Paise per square metre for their acquired lands by the impugned award, giving rise to the instant appeals.

7. This Court has heard Ms.Krina P. Calla, learned Assistant Government Pleader for the appellant, and Mr.A.J.Patel, learned counsel for the original claimant/claimants in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimant/s, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. Though the witness for the claimants failed to substantiate his assertion that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per year per *vigha* from the sale of agricultural produces, there is no manner of doubt that the lands acquired in the instant case were irrigated lands. This fact stands proved by the contents of 7/12

extracts relating to the lands acquired, which were produced at Exhibits 15 to 28. The record does not indicate that the claimants had claimed enhanced compensation either on the yield basis or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of Village: Kachrol. The said award was produced at Exh.29. A perusal of Exh.29 indicates that the lands of village Kachrol, Taluka : Viramgam, District : Ahmedabad were acquired for the public purpose of construction of canal under Narmada Project pursuant to publication of notification under Section 4(1) of the Act in the Official Gazette on June 23, 1993. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs. 1.05 Ps. for irrigated lands and Rs. 0.70 Ps. for non-irrigated lands by his award dated June 13, 1996, though the claim of the claimants was to award them compensation at the rate of Rs. 20/- per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), which were

registered as Land Acquisition Cases No. 2477 of 1996 to 2496 of 1996 and Land Acquisition Case No.727 of 1998. In the said cases, on behalf of the claimants, witness Gautambhai Shantilal Vora was examined at Exh.43; whereas on behalf of the acquiring authorities, witness Antimbabu D.Desai was examined at Exh.51. What was relied upon by the Reference Court in the said cases for the purpose of awarding additional compensation at the rate of RS. 19.30 Ps. per sq.mt. was the previous award of Reference Court relating to the lands of village Bantai. The award at Exh.29 further indicates that two other awards of Reference Court relating to the lands of villages Dedana and Nadishala were also relied upon for the purpose of awarding additional compensation to the claimants. However, in view of the statement made by the witness for the appellant, there is no manner of doubt that the lands of village Kachrol were of inferior quality than the lands acquired in the instant case. Further, the evidence on record indicates that village Kachrol is adjoining to village Nayakpura. Under the circumstances, this Court is of the opinion that the Reference Court was

justified in placing reliance upon the previous award of the Reference Court relating to the lands of village Kachrol for the purpose of determining market value of the lands acquired in the instant case from village Nayakpura. It is well-settled that the previous award of Reference Court relating to the lands of a Village, which has attained finality, can be relied upon for the purpose of determining the market value of the similar lands acquired from the adjoining village.

What is relevant to notice is that in the instant case, notification under Section 4(1) of the Act for acquiring lands from village Nayakpura was published in the Official Gazette on November 13, 1992, whereas notification issued under Section 4(1) of the Act for the purpose of acquiring lands from village Kachrol was published in the Official Gazette on June 23, 1993. Meaning thereby, the Reference Court, in the instant case, has relied upon the award of the Reference Court in respect of the lands which were subsequently acquired. Further while placing reliance on the previous award of the Reference Court relating to the lands of village Kachrol, in

substance the Reference Court relied upon the previous awards of the Reference Court relating to the lands of villages Dedana, Bantai and Nadishala. Under the circumstances, it is agreed between the learned Counsels for the parties that appropriate deduction will have to be made from the compensation determined as payable to the claimants, whose lands were acquired from village Kachrol while fixing market value of the lands acquired in the instant case. The learned Counsels for the parties have agreed that after making appropriate deduction, the claimants would be entitled to, in all, the compensation at the rate of Rs. 17/- per sq.mt. for their acquired lands and, therefore, the impugned award be accordingly modified. Except the modification in the impugned award as suggested by the learned Counsels for the parties, no ground is made out by the learned Counsel for the appellant to set aside the impugned award as a whole or to restore the award passed by the Special Land Acquisition Officer. In view of the above discussion, the appeals will have to be allowed partly.

For the foregoing reasons, all the appeals succeed. The judgment and award dated September 30, 2004 rendered by the learned Extra Assistant Judge & Special Judge (L.A.R.), Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case No. 760 of 1998 with Land Acquisition Case Nos.766 to 778 of 1998 awarding compensation to the claimants, in all, at the rate of Rs.20.45 paise per square metre for irrigated lands and Rs.20/- per square metre for non-irrigated lands, is hereby modified and it is held that the claimants would be entitled to, in all, compensation at the rate of Rs.17/- per square metre for their acquired lands. The other benefits, which have been granted to the claimants by the impugned award, are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]